

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2007

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) Nos.591 and 592 of 2007

Commissioner of Income-tax-IV,
Chennai.

..Appellant in
both the T.C.(A)s.

Vs.

P.Vasu

..Respondent in
both the T.C.(A)s.

Appeals under Section 260A of the Income-tax Act, 1961 against the order of the Income-tax Appellate Tribunal, Chennai Bench 'B', Chennai in I.T.A. Nos.486(Mds)/97 and 706(Mds)/97 dated 24.11.2004, for the assessment year 1993-94. Against ITA 36/96-97 dated 21.1.97 on the file of the Commissioner of Income Tax (Appeals) -IV Chennai dated 21.1.97 against PAN/GIR No.270J-V on the file of the Assistant Commissioner of Income Tax, City Circle V (Inv) (2) Madras-6.

For Appellant : Mr.J.Narayanaswamy,
Standing Counsel for
Income-tax Department

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

These appeals are filed by the Revenue against the order of the Income-tax Appellate Tribunal, Chennai Bench 'B', Chennai in I.T.A. Nos.486(Mds)/97 and 706(Mds)/97 dated 24.11.2004, raising the following common substantial questions of law:-

- "1. Whether in the facts and circumstances of the case, the Tribunal was right in deleting the addition made on account of cash credits without verifying the creditworthiness of the creditors?
2. Whether in the facts and circumstances of the case, the Tribunal was right in

deleting the addition on account of excess cash balance by telescoping the addition into Rs.15 lacs that was disclosed by the assessee?

3. Whether in the facts and circumstances of the case, the Tribunal was right in deleting the addition on account of suppression of sale of distribution rights of the film on the ground that the assessee had offered to disclose Rs.15 lacs under the head 'profession' and not 'business'?

2. The facts leading to the above substantial questions of law are as under:

The assessee is a Film Director and has also been a Producer under the banner "Kamalam Movies". The relevant assessment year is 1993-94 and the corresponding accounting year ended on 31.03.1993. During the year, the assessee directed and produced the film "Walter Vetrivel" which a box office movie. There was a raid at the premises of the assessee on 14.07.1993 and in the course of search, there was a seizure of cash of Rs.1.70 lakhs. The assessee filed Return of income on 27.10.1993 declaring a total income of Rs.33,54,310/-. The Return was processed under Section 143(1)(a) of the Income-tax Act ("Act" in short) and determined a total income of Rs.72,04,310/-. While completing the assessment, the Assessing Officer made the following additions:-

- (1) Cash credits for which proper explanation was not available .. Rs.4,00,000/-
 - (2) Suppression of income relating to distribution of rights of the film of Madurai-Ramanathapuram area .. Rs.11,50,000/-
 - (3) Suppression of income relating to distribution of rights of the film for Chingalpattu area .. Rs. 7,60,000/-
 - (4) Suppression of income relating to distribution of rights of the film for Salem area .. Rs. 8,60,000/-
 - (5) Excess cash balance in the books of Kamalam Movies .. Rs. 6,25,000/-
 - (6) Other disallowances .. Rs. 55,000/-
- | | |
|-------|-------------------|
| Total | .. Rs.38,50,000/- |
|-------|-------------------|

Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income-tax (Appeals). C.I.T.(A) confirmed the addition of Rs.4 lakhs as stated in (1) above. In respect of other additions, the C.I.T.(A) deleted the additions. Aggrieved, both the assessee as well as the Revenue filed appeals to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal allowed the assessee's appeal and dismissed the Revenue's appeal. Hence the present tax cases by the Revenue.

3. Learned Standing Counsel appearing for the Revenue submitted that the assessee had not discharged his burden of proof either by producing the creditors before the Assessing Officer or by getting the confirmation letters from the respective creditors. He further submitted that the creditors did not produce any financial statement from the bank, etc. to show their capacity to lend such monies. Further, he submitted that the Tribunal is wrong in deleting the other additions on the ground that the assessee had made disclosure of income of Rs.15 lakhs.

4. Heard the counsel. The facts relating to Question No.1 are that the assessee apparently received from four persons, Rs.1,00,000/-, Rs.1,50,000/-, Rs.1,00,000/- and Rs.50,000/-. Three creditors were produced before the Officer and the fourth creditor who had advanced a sum of Rs.1,00,000/- was not produced. The three creditors apparently confirmed that they have advanced money, before the Assessing Officer. The creditors apparently were persons having agricultural lands and they had stated that they were deriving huge income from the said agricultural lands and out of that income, money was lent to the assessee. The said facts have not been found to be false by the authorities below. In view of the same, the Tribunal accepted the explanation offered by the assessee. Further the Tribunal had given a categorical finding in Paragraph 4 of the order and held as follows:-

"4. On the above facts after considering the rival submissions and considering the statements of three persons that they have agricultural lands and income from agricultural activities, which have not been found to be incorrect except that it was not accepted, in our opinion the assessee had discharged the onus that was on him. The alternative submission of the assessee was that even assuming that the amounts have not been proved, then to the extent of additions already made of Rs.15 lakhs the assessee should be given the

benefit of telescoping. On the above mentioned facts in our opinion the claim of the assessee can be accepted and we delete the addition on account of cash credits."

The explanation offered by the assessee was accepted by the Tribunal. Further, because of the additions made by the Assessing Officer to the extent of Rs.15 lakhs, the Tribunal had correctly given the benefit of telescoping, to the assessee. Hence we are of the view that the order of the Tribunal is in accordance with law. In view of the same, no substantial question of law arises for consideration of this Court in respect of Question No.1.

5. In respect of Question Nos.2 and 3, a factual finding has been given by both the authorities that the assessee himself come forward for the addition of Rs.15 lakhs. Hence it is not a fit case for any separate addition on account of suppression of sale of distribution rights. The Tribunal, in paragraph 6, held as follows:-

"Appeal by the Department - The issue is with regard to the order of the CIT(A) wherein he had held that the income from sale of distribution rights of films were assessed on mere suspicion. The CIT(A) considering that the assessee had come forward for an addition of Rs.15 lakhs, he came to the conclusion that separate addition was not called for in this connection. It is not the case of the Department that amount could not cover the suppression of income. In our opinion no interference is called for. In the result, the appeal by the assessee is allowed and that of the Department dismissed."

In view of the above reasoning of the Tribunal, we find no error or legal infirmity in the order of the Tribunal so as to warrant interference. Hence, no substantial questions of law arise for consideration of this Court in respect of Question Nos.2 and 3 also.

6. Under these circumstances, the order passed by the Tribunal is in accordance with law and the same does not require interference. Hence no substantial questions of law

arise for consideration of this Court and accordingly, the tax cases are dismissed. Consequently, M.P.No.1 of 2007 in T.C.(A) No.592 of 2007 is closed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

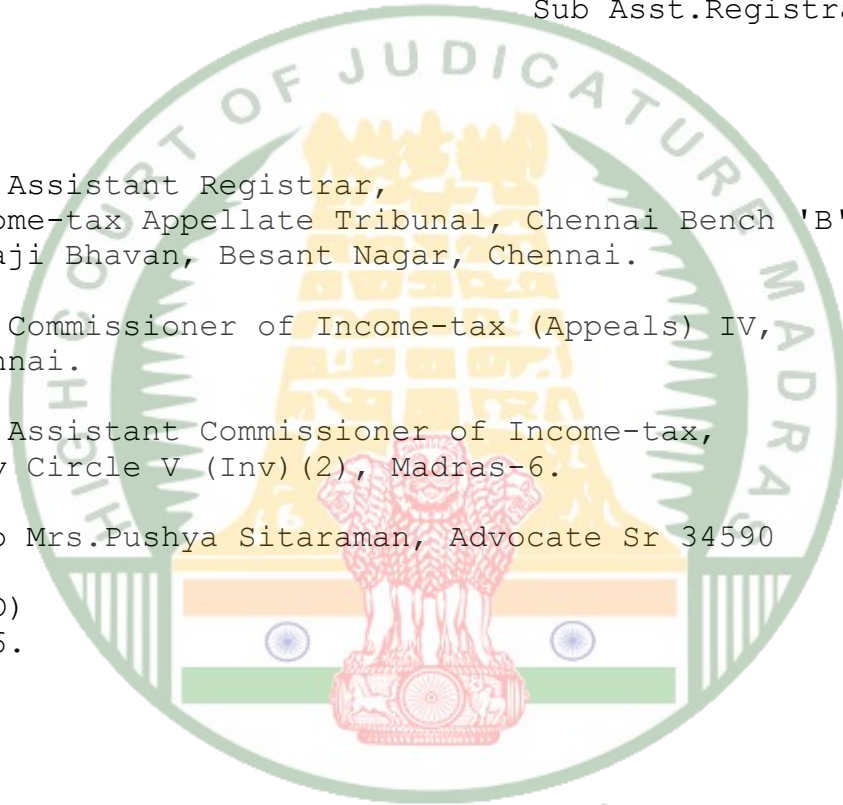
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To

1. The Assistant Registrar,
Income-tax Appellate Tribunal, Chennai Bench 'B',
Rajaji Bhavan, Besant Nagar, Chennai.
2. The Commissioner of Income-tax (Appeals) IV,
Chennai.
3. The Assistant Commissioner of Income-tax,
City Circle V (Inv) (2), Madras-6.

+lcc to Mrs.Pushya Sitaraman, Advocate Sr 34590

SMV (CO)
km/22.6.



T.C.(A) Nos.591 and
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